



DAK  
ZMW

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: A7145

Phillip MERRICK, et al.

Appln. No.: 09/274,979

Group Art Unit: 2126

Confirmation No.: 9188

Examiner: St. John Courtenay III

Filed: March 23, 1999

For: XML Remote Procedure Call (XML-RPC)

**PETITION TO DIRECTOR OF U.S. PATENT AND TRADEMARK OFFICE  
UNDER 37 CFR 1.181 AND 37 CFR 1.182 REQUESTING ACTION**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The undersigned respectfully petitions the Director of the U.S. Patent and Trademark Office ("the Director") to exercise his supervisory authority and order issuance of a Notice of Allowance in this application.

The present application was filed March 23, 1999, and has now been pending for over six years. There is no reasonable basis for this length of pendency, and is by far the longest pendency this attorney has seen in almost 30 years of practice aside from cases that have been involved in an interference or a lengthy appeal. It was three years after filing before a first action was received, and more than two and one half years of prosecution despite the fact that applicants tried to simplify prosecution from the beginning by responding to the first Office action by amending all claims in the case to depend from claims allowed by the examiner in the first Office action.

MPEP 707.02 provides that an application pending for more than five years will be considered "special" with a view to expeditious completion of its proceedings. That threshold was passed in March of 2004. Despite this, seven months have now passed since this application was considered in condition for allowance, as indicated by the "Notice of Allowability" of December 13, 2004 appearing in the File History listing on the USPTO web site.

The undersigned attempted to resolve the issue by telephone calls during the first quarter of 2005, but was simply told that the application was being processed and there was nothing that could be done. A letter was then sent to the Group Director on April 8, 2005 (copy attached) asking for assistance

Petition to Director  
Appl. No. 09/274,979

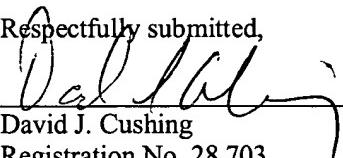
in obtaining a Notice of Allowance at that time four months after the Notice of Allowability and six years after filing. The undersigned received no response to that letter, and no Notice of Allowance. Subsequent telephone calls to the director of Technology Unit 2126 have resulted in phone messages left but no returned calls. The undersigned was eventually advised on July 14, 2005 that the application is still being processed by the Section currently responsible for it, and that due to their workload it would be "at least" another several months before they would get to it.

No one will tell the undersigned exactly who has the file, or exactly what they are doing with it, and the only people the undersigned can find to ask about the application all say it is out of their control and there is nothing to do but wait. Applicant has waited almost 6 ½ years now, and is still waiting with no end in sight. This application was filed before the extensive patent term extension provisions were enacted, and every day the USPTO sits on this application is a day of patent term lost to the applicant. That is simply wrong. The USPTO should be embarrassed by the way this case has languished, and by the "special" examination status of this case which has been twice brought to the attention of the Office but has been and is now being simply ignored.

The assistance of the Director is requested in putting a stop to the simply unacceptable delays that have plagued this case since its original filing.

If a petition fee is required, e.g., on the grounds that this is a question not specifically provided for under 37 CFR 1.182, please charge the petition fee to Deposit Account 19-4880. If such a petition fee is required, a refund of the petition fee is respectfully requested in view of the circumstances described above.

Respectfully submitted,

  
\_\_\_\_\_  
David J. Cushing  
Registration No. 28,703

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: July 15, 2005

04/08/2005 12:47 FAX 2022937860

001/002



2100 Pennsylvania Avenue, NW  
Washington, DC 20037-3213  
T 202.293.7060  
F 202.293.7860  
[www.sughrue.com](http://www.sughrue.com)

FAX

---

Date April 8, 2005

To Group Director - Group 2126

Of United States Patent and Trademark Office

Fax (703) 872-9306

From David J. Cushing

Subject Letter to Group Director Requesting Action

Our Ref A7145 Your Ref 09/274,979

Pages 2  
(including cover sheet)

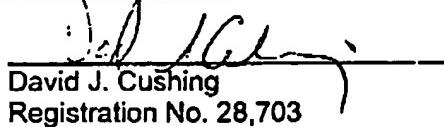
---

Please call attention to problems with this transmission by return fax or telephone. Thank you.

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS CONFIDENTIAL, MAY BE ATTORNEY-CLIENT PRIVILEGED, AND IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. UNAUTHORIZED USE, DISCLOSURE OR COPYING IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US.

**Certification of Facsimile Transmission**

I hereby certify that the paper listed above is being transmitted via facsimile to the Patent and Trademark Office on the date shown below.

  
David J. Cushing  
Registration No. 28,703

Date: April 8, 2005



## PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: A7145

Phillip MERRICK, et al.

Appln. No.: 09/274,979

Group Art Unit: 2126

Confirmation No.: 9188

Examiner: St. John Courtenay III

Filed: March 23, 1999

For: XML Remote Procedure Call (XML-RPC)

LETTER TO GROUP DIRECTOR REQUESTING ACTION

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

The undersigned respectfully requests prompt issuance of a Notice of Allowance in this case. The application was filed March 23, 1999, and has now been pending for over six years. There is no reasonable basis for this length of pendency, and is by far the longest pendency this attorney has seen in almost 30 years of practice aside from cases that have been involved in an interference or a lengthy appeal. It was three years after filing before a first action was received, and more than two and one half years of prosecution despite the fact that applicants tried to simplify prosecution from the beginning by responding to the first Office action by amending all claims in the case to depend from claims allowed by the examiner in the first Office action. MPEP 707.02 provides that an application pending for more than five years will be considered "special" with a view to expeditious completion of its proceeding. That threshold was passed over a year ago. Despite this, four months have now passed since this application was considered in condition for allowance, as indicated by the "Notice of Allowability" of December 13, 2004 appearing in the File History listing on the USPTO web site.

The assistance of the Group Director is requested in putting a stop to the simply unacceptable delays that have plagued this case since its original filing.

Respectfully submitted,

David J. Cushing  
 Registration No. 28,703

SUGHRIE MION, PLLC  
 Telephone: (202) 293-7060  
 Facsimile: (202) 293-7860

WASHINGTON OFFICE  
 23373  
 CUSTOMER NUMBER

Date: April 8, 2005

Best Available Copy